

MAINE DEPARTMENT OF TRANSPORTATION OFFICE OF PASSENGER TRANSPORTATION FFY 2009 DBE GOAL

OVERALL GOAL

MaineDOT, through its Office of Passenger Transportation, intends to expend 1.9% of the amounts received from federal financial assistance on FTA-assisted contracts with certified small business concerns owned and controlled by socially and economically disadvantaged individuals (DBEs). Because for the last five years, the MaineDOT has met and exceeded the former DBE goals and because the FFY 2008 DBE goal of 1.4% DBE for FTA contracts has also been exceeded to date, and because we fully believe this goal can be met without contract specific goals, MaineDOT intends to fulfill the goal with a wholly race neutral program.

METHOD OF ESTABLISHING GOAL

Step 1 – Determining a base figure

49 CFR 45 (b) States “Your overall goal must be based on demonstrable evidence of the availability of ready, willing and able DBEs relative to all businesses ready, willing and able to participate on your DOT-assisted contracts (hereafter, the “relative availability of DBEs”). The goal must reflect your determination of the level of DBE participation you would expect absent the effects of discrimination. You cannot simply rely on either the 10 percent national goal, your previous overall goal or past DBE participation rates in your program without reference to the relative availability of DBEs in your market.”

MaineDOT will calculate the overall goal using the criteria based in **49 CFR § 26.45(c) “Step 1. You must begin your goal setting process by determining a base figure for the relative availability of DBEs.”**

The determination will be based on a level of DBE participation relative to all businesses ready, willing and able to participate on FTA-assisted contracts, and reflect a level MaineDOT would expect in the absence of discrimination. The overall goal setting procedure is based on the following:

- (1) Use DBE Directories and Census Bureau Data. Determine the number of ready, willing and able DBEs in your market from your DBE directory. Using the Census Bureau's County Business Pattern (CBP) data base, determine the number of all ready, willing and able businesses available in your market that perform work in the same NAICS codes. (Information about the CBP data base may be obtained from the Census Bureau at their web site, www.census.gov/epcd/cbp/view/cbpview.html.) Divide the number of DBEs by the number of all businesses to derive a base figure for the relative availability of DBEs in your market.**

Market Area:

The market area was determined to be Statewide, since the substantial majority of the contractors and subcontractors with which MaineDOT does business are located in Maine, and the entire state is the area in which MaineDOT spends the substantial majority of its contracting dollars.

Data Sources:

The NAICS data for transit providers, agencies/firms included in category 485,

NAICS code	Description	<u>Estab-lish-ments</u>	<u>Revenue (\$1,000)</u>	<u>Annual payroll (\$1,000)</u>	<u>Paid employees</u>
485	<u>Transit & ground passenger transportation</u>	85	49,395	21,047	1,272
4853	<u>Taxi & limousine service</u>	44	11,060	4,223	332
48531	<u>Taxi service</u>	29	5,479	2,042	224
48532	<u>Limousine service</u>	15	5,581	2,181	108
4854	<u>School & employee bus transportation</u>	21	17,946	8,418	555
4859	<u>Other transit & ground passenger transportation</u>	10	10,284	3,818	206

Economic Census 2002, Maine Data for NAICS 485

There are no DBE firms in Maine's catalog under these NAICS codes. However, there are firms that offer support and engineering services to transit providers including additional categories.

The MaineDOT DBE Directory lists the following firms when searching under the category "transit". None of these firms are prime DBE transit providers. Their scopes are related to the NAICS codes for other services related to transit contracts/subcontracts.

- **ALTERNATE TRANSIT ADVERTISING, INC.**
- **FITZGERALD AND HALLIDAY**
- **KM CHNG ENVIRONMENTAL**
- **LAPCHICK CREATIVE**

The following NAICS codes match the codes offered by the above providers for Maine.

541330	<u>Engineering Services</u>	259	229,336	100,548	2,497
541613	<u>Marketing Consulting Services</u>	41	9,660	3,063	94
541620	<u>Environmental Consulting Services</u>	52	15,792	6,450	185
541810	<u>Advertising Agencies</u>	60	33,873	13,285	375

Economic Census 2002, Maine Data for various NAICS codes related to transit contracts/subcontracts

Therefore, the denominator would be $85 + (259+41+ 52+60) = 497$ to represent all potential transit firms and transit related firms for potential contracts and subcontracts in Maine.

The numerator would be 4.

The base goal based upon the 2002 census and DBE Directory data would be: $4/497 = 0.8\%$

(3) Use data from a disparity study. Use a percentage figure derived from data in a valid, applicable disparity study.

Maine has not conducted any disparity studies that would apply to the calculation of this goal.

(4) Use the goal of another DOT recipient. If another DOT recipient in the same, or substantially similar, market has set an overall goal in compliance with this rule, you may use that goal as a base figure for your goal.

This method is not used for goal calculation, but is used in a discussion of the goal in a following section (See Step 2).

(5) Alternative methods. You may use other methods to determine a base figure for your overall goal. Any methodology you choose must be based on demonstrable evidence of local market conditions and be designed to ultimately attain a goal that is rationally related to the relative availability of DBEs in your market.

MaineDOT does not propose any alternative method for base goal calculation.

Maine DOT FTA – Funded DBE BASE GOAL = 0.8%

Step 2 - ADJUSTMENTS TO BASE

26.43(d) states “Once you have calculated a base figure, you must examine all of the evidence available in your jurisdiction to determine what adjustment, if any is needed to the base figure in order to arrive at your overall goal.”

(1) There are many types of evidence that must be considered when adjusting the base figure. These include:

(i) The current capacity of DBEs to perform work in your DOT-assisted contracting program, as measured by the volume of work DBEs have performed in recent years;

Past participation in FTA funded services for the Department are as follows:

<u>FFY 03</u>	<u>FFY 04</u>	<u>FFY 05</u>	<u>FFY 06</u>	<u>FFY 07</u>	<u>FFY 08 (1st half)</u>
2.2%	1.3%	2.6%	0.5%	2.9%	2.5%

Details of DBE commitments and awards data presented above:

- '03 is \$26,209.00 out of \$1,193,288.00 and 1 prime and 1 subcontract out of 57 prime contracts and 1 subcontract.
- '04 is \$27,598.00 out of \$2,094,402.00 and 2 prime contracts and 2 subcontracts out of 35 primes and 2 subcontracts.
- '05 is \$106, 575.00 out of \$4,113,600.00 and 2 prime contracts and 2 subcontracts of totals 61 prime and 11 subcontracts.
- '06 is \$45,140.00 out of \$9,133,494.04 and 0 prime contracts and 6 subcontracts out of 81 prime and 6 subcontracts.
- '07 is \$233,943.00 out of \$5,652,897.86 and 1 DBE prime contracts and 5 DBE subcontracts of 73 prime contracts and 8 subcontracts.
- '08 (1st half) is \$120,254.82 out of \$4,724,671.85 and 0 DBE prime contracts and 5 DBE subcontracts out of 38 prime contracts and 7 subcontracts.

The median past participation is 2.35%. For FFY 07 4.1% DBE commitment was attained. Because this exceeded the FFY 07 goal of .75%, contract specific goals were not recommended for FFY 08. MaineDOT still does not recommend contract goals/race conscious effort because the first half of FFY 08 reports 2.5% attainment, well over the 1.4% goal for that year to date. If adjustment for past participation were made, the recommended goal would be the average of the median past participation and the base goal:

$$(1.4 + 2.35)/2 = 1.9\%$$

MaineDOT FTA DBE BASE Goal Adjusted for Median Past Participation = 1.9%

(ii) Evidence from disparity studies conducted anywhere within your jurisdiction, to the extent it is not already accounted for in your base figure; and

There are no related disparity studies for Maine.

(iii) If your base figure is the goal of another recipient, you must adjust it for differences in your local market and your contracting program.

The base figure selected is not the goal of another recipient.

However, New Hampshire and Vermont have substantially similar markets for Transit contracting.

- Vermont's base goal for 2007 was 3.2% with no adjustment.
- New Hampshire's base goal for 2007 was calculated several ways for comparison. The results are 1.69%, 9.09%, or 7.48%, depending on the formula. The overall goal with adjustment was 2.0%.

A base goal of either 2.0% or of 3.2% would be reasonable with adjustments for differences in Maine. Maine generally has smaller metropolitan areas, smaller contracts, and much more rural services to consider. Maine does not currently have enough specific data from the other states on their transit programs to adjust the goal for differences in Maine.

In addition, Maine does have sufficient other data to produce an independent base goal.

(2) If available, you must consider evidence from related fields that affect the opportunities for DBEs to form, grow and compete. These include, but are not limited to:

(i) Statistical disparities in the ability of DBEs to get the financing, bonding and insurance required to participate in your program;

Maine has not collected this data related to transit contracts. Anecdotally, bonding and financing are generally difficult to obtain for small businesses in Maine, especially tribal businesses.

(ii) Data on employment, self-employment, education, training and union apprenticeship programs, to the extent you can relate it to the opportunities for DBEs to perform in your program.

Maine has not collected this data related to transit contracts.

(2) If you attempt to make an adjustment to your base figure to account for the continuing effects of past discrimination (often called the ``but for'' factor) or the effects of an ongoing DBE program, the adjustment must be based on demonstrable evidence that is logically and directly related to the effect for which the adjustment is sought.

Maine will not attempt to adjust the base figure based upon the effects of the DBE program. The Maine Department of Transportation advocates for the DBEs on each federally funded contract and provides assistance in locating DBEs to the prime contractors. We do not have data to compare the effect of the program to the results we would get without the program. Thus, we do not have a logical way to make an adjustment. The DBE supportive services contract with Eastern Maine Development Corporation/Maine Professional Technical Assistance Center is still fairly new. We plan to study the impact of this program in 2010.

(3) Other Discussion Related to Maine's Historical Data:

The Department's bidders list of actual and potential FTA funding sub-recipient agencies/firms is as follows:

Bidders that submitted either prime or subcontract bids on FTA funded work for the last 3 years:

1. AMES	2. Alternate Transit Advertising, Inc.
3. Androscoggin Valley Council of Governments	4. Aroostook Regional Transportation
5. Ashton Associates Incorporated	6. Bangor Chrysler, Plymouth, Dodge
7. Barton & Gingold	8. BAT Community Connector
9. BACTS	10. Biddeford-Saco-Old Orchard Beach Transit Committee
11. BMI	12. Carolyn Ridge
13. Casco Bay Island Transit District	14. Casey & Godfrey
15. City of Bath	16. Coastal Transportation. Inc.
17. Community Concepts	18. DMJM Harris
19. Domenech, Hicks & Krockmalnic Architects	20. Don Brown Bus Sales
21. Downeast Transportation	22. Economic Dev Research Group
23. Fitzgerald & Halliday, Inc.	24. Freeport Transit, Inc.
25. Garrand & Company, Inc.	26. Greater Portland Council of Governments
27. HNTB Corporation	28. Holt & Lachman
29. Howard/Stein-Hudson	30. IBI Group
31. ICST, Inc.	32. Innovative Resource Group

33. Jack Smith Consulting	34. Kay Nordstrom
35. Kennebec Valley Community Action Program	36. Keville Enterprises
37. KFH Group, Incorporated	38. KKO & Associates, LLC
39. KM CHNG Environmental	40. Land Design Group,
41. Larry Glantz/Muskie	42. Lincoln Chevrolet
43. Matthews Buses	44. McMahon
45. METRO	46. Mike Merwin
47. Mobilestrat, Inc.	48. Mundle & Assoc.
49. Normandeau,	50. Northern Bus Sales
51. Northstar Hydro	52. O'Connor GMC
53. Oak Square Resources, LLC	54. Patsy's, Inc.
55. Penquis CAP	56. Peter Schauer
57. Precision Compliance	58. Pupil Transportation Consultants
59. Quisqueya Software and Systems, Inc.	60. Regional Transportation Program
61. Sharon Eaton	62. Shepard Bros.
63. Smart Associates	64. Smith Group
65. South Portland Bus Service	66. Southern Maine Planning Commission
67. Systra	68. Tom Crikelair
69. TranSytems Corporation	70. URS Corporation
71. V.I.P. Tours and Travel	72. VHB, Inc.
73. Von Grossman and Company	74. W.C. Cressey & Son, Inc.
75. Waldo Community Action Partners	76. Walker Chevrolet, Inc.
77. Warner Trans Consulting	78. Washington Hancock Community Agency
79. West's Transportation, Inc.	80. Western Maine Transportation Services
81. Wilbur Smith Associates	82. York County Community Action Corp.

Total number of bidders = 82 firms. The number 82, therefore, is the denominator.

Of these firms, the following are DBE's:

1. Alternate Transit Advertising	2. Ashton Associates Incorporated
3. Precision Compliance, Inc	4. Fitzgerald & Halliday, Inc.
5. Lapchick Creative	6. ICST, Inc
7. Innovative Resource Group	8. KM CHNG Environmental
9. Keville Enterprises	10. Mobilatat, Inc.

Number of bidding DBE's = 10 firms.

Therefore for the base goal, 10 is the numerator.

$$10/82 = 12.2\%$$

We know from past attainment that this is not a reasonable base goal. Although we are fortunate to have a

large proportion of DBE bidders, they are primarily bidding on small subcontracts, (typically approximately 1% of monetary value of the work) which amounts to lower attainment percentages in dollars. There is one DBE prime bidder, but with the frequency of contracting, we cannot guarantee they will get the winning prime bid on the contract in their area of operation, nor do we want to base the goal on that assumption.

OVERALL GOAL CALCULATION

FFY 2009 FTA adjusted DBE goal: 1.9 %

RACE NEUTRAL AND CONSCIOUS MEASURES

The Department was able to exceed its DBE goal for 2007 due to DBE award of subcontracts. The first part of FY 08 reports a 2.5% achievement, which exceeds the 1.4% goal. For this reason, we believe the **FFY 2009 calculated goal DBE goal of 1.9% will be met via wholly race neutral measures.**

The Department uses its DBE Supportive Services allocation fully to support the DBE Program, and not to pay administrative salaries. The funding supports a number of projects and/or initiatives around the state, including outreach and technical assistance to businesses. The program information can be accessed by a website at:

http://www.emdc.org/business/services_detail.cfm?services_group_id=01.05.2007.10.18.49&show_service=true

Finally, as stated previously, the Department has no evidence of discrimination on the part of transit contractors and does have evidence of continuing good faith effort.

PUBLIC PARTICIPATION PLAN

The public will be notified by publication July 13th, 14th, and 15th in the Kennebec Journal, the State's newspaper of record for legal advertisements.

Additionally, the goal notification and methodology will be posted in other statewide newspapers (Bangor Daily News and the Portland Press Herald) and on the MaineDOT website.

Several interested stakeholders will be notified directly by e-mail of the goal publication, including current service providers and those on the bidder's list (given above in the goal discussion – See Step 2). Barbara Donovan sent a notice via e-mail of the draft goal in June and will be able to send this final draft of the goal and methodology by July 13th, 2007.

Public comment will be accepted for 45 days following the last date of publication. The public comment period will be complete on August 28th, 2007. The goal will be submitted for approval to the FTA on August 1st, 2007 with an update based upon public comment sent to FTA on August 30th.

The following policy was inserted into the new procedure manual for civil rights (currently in draft form): "Prior to the publication of the DBE goal and methodology for public input each year, the MaineDOT Office of Civil Rights will host a conference call or meeting to solicit comments on the methodology process."